

Presentment Date and Time: July 1, 2021 at 10:00 a.m. (Eastern Time)

Objection Deadline: June 30, 2021 at 4:00 p.m. (Eastern Time)

Hearing Date and Time (Only if Objections Filed): To Be Determined

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

Ray C. Schrock, P.C.

Jacqueline Marcus

Garrett A. Fail

Sunny Singh

*Attorneys for Debtors*

*and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |   |                                |
|---|---|--------------------------------|
| -----X                                      | : |                                |
| In re                                       | : | <b>Chapter 11</b>              |
|   | : |                                |
| SEARS HOLDINGS CORPORATION, <i>et al.</i> , | : | <b>Case No. 18-23538 (RDD)</b> |
|   | : |                                |
| Debtors. <sup>1</sup>                       | : | <b>(Jointly Administered)</b>  |
|   | : |                                |
| -----X                                      |   |                                |

**NOTICE OF PRESENTMENT OF  
STIPULATION, AGREEMENT, AND ORDER GRANTING  
LIMITED RELIEF FROM THE AUTOMATIC STAY (ABNER MARQUEZ)**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 1700 Broadway, 19th Floor, New York, NY 10019.

**PLEASE TAKE NOTICE** that Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), will present the *Stipulation, Agreement and Order Granting Limited Relief from the Automatic Stay (Abner Marquez)* (the “**Stipulation**”) to the Honorable Robert D. Drain, United States Bankruptcy Judge, for signature on **July 1, 2021 at 10:00 a.m. (Eastern Time)**. A copy of the Stipulation is attached hereto as **Exhibit 1**.

**PLEASE TAKE FURTHER NOTICE** that, unless a written objection to the Stipulation is served and filed together with proof of service with the Clerk of the Court, and a courtesy copy is delivered to the undersigned and to the chambers of the Honorable Robert D. Drain, so as to be received by **June 30, 2021 at 4:00 p.m. (Eastern Time)**, there will not be a hearing to consider the Stipulation, and the Stipulation may be signed and entered by the Court.

**PLEASE TAKE FURTHER NOTICE** that, only if a written objection is timely filed and served with respect to the Stipulation, a hearing will be held on a date **to be determined** (the “**Hearing**”) to consider the Stipulation before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 118, 300 Quarropas Street, White Plains, New York, 10601-4140 (the “**Bankruptcy Court**”).

**PLEASE TAKE FURTHER NOTICE** that objecting parties are required to attend the Hearing and failure to appear may result in relief being granted upon default.

Dated: June 23, 2021  
New York, New York

/s/ Jacqueline Marcus  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Ray C. Schrock, P.C.  
Jacqueline Marcus  
Garrett A. Fail  
Sunny Singh

*Attorneys for Debtors  
and Debtors in Possession*

**Exhibit 1**

**Stipulation**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|  |                                  |
|--|----------------------------------|
| -----X                                     |                                  |
| <b>In re</b>                               | :                                |
|  | :                                |
|  | : <b>Chapter 11</b>              |
| <b>SEARS HOLDINGS CORPORATION, et al.,</b> | :                                |
|  | :                                |
|  | : <b>Case No. 18-23538 (RDD)</b> |
|  | :                                |
| <b>Debtors.<sup>1</sup></b>                | : <b>(Jointly Administered)</b>  |
| -----X                                     |                                  |

**STIPULATION, AGREEMENT AND ORDER  
GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY  
(ABNER MARQUEZ)**

This stipulation, agreement, and order (the “**Stipulation**”) is entered into by and among Sears Holdings Corporation (“**Sears**”) and its debtor affiliates in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) and Abner Marquez (“**Claimant**”). The Debtors and the Claimant collectively are referred to in this Stipulation as the “**Parties**,” and, each, as a “**Party**.” The Parties hereby stipulate and agree as follows:

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 1700 Broadway, 19th Floor, New York, NY 10019.

## RECITALS

A. On October 15, 2018 (the “**Commencement Date**”), the Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

B. On September 9, 2020, Claimant commenced an action styled *Marquez v. Mendez at al.*, (Case No. 20STLC07653) pending in the Superior Court of California, County of Los Angeles (the “**Action**”), alleging claims arising from a motor vehicle accident that occurred on October 11, 2018 (the “**Auto Accident**”).

C. On February 20, 2019, Claimant submitted a proof of claim in these chapter 11 cases (Claim No. 8800) asserting a \$15,000 general unsecured claim against Sears (the “**Proof of Claim**”).

D. The Debtors maintain motor vehicle insurance with ACE American Insurance Company, Policy No. No. ISAH09060960 (together with any applicable excess and umbrella policies, the “**Insurance Policies**”)

E. On September 22, 2020, Claimant completed an inquiry form pursuant to the *Order Approving Procedures for Modification of the Automatic Stay Under Certain Circumstances* [ECF No. 2720] seeking relief from the automatic stay to amend the complaint filed in the Action to add two Debtor entities, Sears Holdings Management Corporation and Sears, Roebuck & Co. (together, the “**Sears Defendants**”), as parties in order to pursue any available proceeds under the Insurance Policies.

F. The Parties have agreed, subject to approval of the Bankruptcy Court, to modify the Automatic Stay pursuant to section 362 of the Bankruptcy Code (the “**Automatic Stay**”) for the limited purpose and subject to the terms and conditions set forth below.

**NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:**

1. This Stipulation shall have no force or effect unless and until approved by the Bankruptcy Court (the “**Effective Date**”).

2. Upon the Effective Date, the Automatic Stay shall be modified solely to the extent necessary to permit Claimant to (i) amend the complaint filed in the Action to add the Sears Defendants, and (ii) continue the Action to recover from the Insurance Policies; provided, that all other provisions of the Automatic Stay, including, without limitation, those provisions prohibiting the commencement or continuation of any other judicial proceeding against Sears, the Sears Defendants, or any other Debtor that was or could have been commenced prior to the Commencement Date, and those provisions prohibiting the Claimant from any act to collect, assess, or recover a claim that arose prior to the Commencement Date from the respective estates and/or assets or property of the estate of any of the Debtors (as defined in section 541 of the Bankruptcy Code), shall remain in full force and effect.

3. As of the Effective Date, the Claimant hereby agrees to waive any right to recovery in the Action against any of the Debtors, including Sears and the Sears Defendants, and any other party that may assert indemnification claims against the Debtors, including any prepetition claims, and shall be limited exclusively to obtaining any recovery in the Action from the proceeds of the Insurance Policies, as provided in Paragraph 2 herein

4. All rights under Section 1542 of the California Civil Code, or any analogous state or federal law, are hereby expressly WAIVED, if applicable, with respect to any of the claims, injuries, or damages described in this Stipulation solely as to the Sears Defendants and the Debtors. Section 1542 of the California Civil Code reads as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

5. As of the Effective Date, any and all proofs of claim (including, without limitation, the Proof of Claim) filed by the Claimant shall be deemed withdrawn with prejudice and the Claimant shall be forever barred and estopped from filing any further proofs of claim relating to the Action or otherwise asserting any claims against Sears, the Sears Defendants, or the other Debtors relating to the Action.

6. The limited relief set forth herein shall not be construed as an admission of liability by the Debtors or any of their non-debtor affiliates regarding any claim or cause of action arising from or in relation to the Action or any other matter.

7. Nothing herein (i) alters, amends or otherwise modifies the terms and conditions of any insurance policies issued to the Debtors or of any related agreements; (ii) creates or permits a direct right of action by the Claimant against any of the Debtors' insurers; (iii) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any allegedly applicable policy, or to otherwise assert any defenses to coverage; or (iv) constitutes a determination or admission that coverage exists with respect to the Claimant's claims.

8. To the extent applicable, the Automatic Stay is hereby modified, if and to the extent necessary, to permit any insurer from which coverage is sought pursuant to Claimant's claims (or any third party administrator with respect to such claims) to administer, handle, defend, settle, and/or pay such claims in the ordinary course of business and without further order of this Bankruptcy Court.



9. Nothing herein alters or amends the terms and conditions of the Court's *Final Order Authorizing Debtors to (I) Continue, Maintain, and Renew Their Insurance Policies and Workers' Compensation Programs; (II) Honor All Obligations With Respect Thereto; and (III) Modify the Automatic Stay With Respect to the Workers' Compensation Program* [ECF No. 792].

10. This Stipulation shall constitute the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

11. Each of the undersigned who executes this Stipulation by or on behalf of a Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such Party.

12. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copies, electronic copies, or facsimiles signed by the Parties here to be charged.

13. This Stipulation shall not be modified, altered, amended, or vacated without the written consent of all Parties hereto or by further order of the Bankruptcy Court.

14. Notwithstanding the applicability of Bankruptcy Rule 4001(a)(3), the terms and provisions of this Stipulation shall be effective immediately and enforceable upon the Effective Date, and shall thereafter be binding upon the Parties hereto and their respective affiliates, successors, and any authorized assigns.

15. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of New York, except to the extent that the Bankruptcy Code applies, without

regard to principles of conflicts of law that would require the application of laws of another jurisdiction.

16. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

*(Signature Page Follows)*

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of  
the day and year first below written.

Dated: June 23, 2021

By: /s/ Jacqueline Marcus  
Jacqueline Marcus  
Garrett A. Fail  
Sunny Singh  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for Debtors  
and Debtors in Possession*

Dated: June 23, 2021

By: /s/ Matthew J. Burne  
Matthew J. Burne  
Leech Tishman Fuscaldo & Lampi, LLC  
525 William Penn Place, 28th Floor  
Pittsburgh, PA 15219  
Telephone: (412) 261-1600  
Facsimile: (412) 227-5551

*Attorney for the Claimant*

**SO ORDERED**

Dated: \_\_\_\_\_, 2021  
White Plains, New York

\_\_\_\_\_  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE